

## CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as \_\_\_\_\_ by the Postal Service has been terminated.

I certify that I have destroyed or returned to the Commission, all materials subject to protective conditions, relevant to the above matter. I also certify that these materials were maintained in accordance with the established protective conditions.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## PART 3010—REGULATION OF RULES FOR MARKET DOMINANT PRODUCTS

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### Subpart A—General Provisions

#### § 3010.1 Applicability.

The rules in this part implement provisions in the Postal Accountability and Enhancement Act (PAEA) establishing ratesetting policies and procedures for market dominant products. With the exception of exigency-based rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Exigency-based rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

#### § 3010.2 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1-A rate adjustment, authorized under 39 U.S.C. 3622(d)(1)(D), is based on the statutory annual limitation. A Type 1-B rate adjustment, authorized under 39 U.S.C. 3622(d)(2)(C), is based on an exception to the annual limitation, and is referred to as unused rate adjustment authority. A Type 2 rate adjustment, authorized under 39 U.S.C. 3622(c)(10), is based on a negotiated service agreement. A Type 3 rate adjustment, authorized under 39 U.S.C.

3622(d)(1)(E), is based on exigent circumstances.

(b) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority.

(c) The Postal Service may combine Types 1-A, 1-B and 2 rate adjustments for purposes of filing with the Commission.

#### § 3010.3 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment represents the usual type of adjustment to rates of general applicability.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1-A rate adjustment for any class that is less than the applicable change in CPI-U results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent adjustment for that class, subject to the expiration terms in § 3010.26(d).

#### § 3010.4 Type 1-B rate adjustment—in general.

(a) A Type 1-B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part. A rate adjustment using unused rate adjustment authority may not result in an increase for the class that exceeds the applicable annual limitation plus 2 percentage points.

(b) Type 1-B rate adjustments filed within 12 months of each other may not apply more than 2 percentage points of unused rate authority to any class.

(c) Unused rate adjustment authority in each class may be applied to rate adjustments in the same class for up to 5 years.

#### § 3010.5 Type 2 rate adjustment—in general.

A negotiated service agreement rate adjustment entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

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### **§ 3010.6 Type 3 adjustment—in general.**

(a) A Type 3 rate adjustment is a request for an exigency-based rate adjustment. It is authorized only when justified by exceptional or extraordinary circumstances.

(b) An exigency-based rate adjustment is not subject to the inflation-based limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

### **§ 3010.7 Schedule of regular rate changes.**

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Changes. The Commission shall display the Schedule for Regular and Predictable Rate Changes on the Commission Web site, <http://www.prc.gov>.

(b) The Schedule for Regular and Predictable Rate Changes shall provide mailers with estimated implementation dates for future Type 1-A rate changes for each separate class of mail, should such changes be necessary and appropriate. Rate changes will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Changes shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate changes.

(d) The initial Schedule for Regular and Predictable Rate Changes must be filed within 90 days of the effective date of this rule. The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the schedule.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Changes, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule

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for Regular and Predictable Rate Changes. In such case, the Postal Service should provide a succinct explanation for such variation with its Type 1-A filing. No explanation is required for changes involving smaller than predicted rate adjustments.

### **Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)**

#### **§ 3010.10 Procedures.**

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1-A or Type 1-B rate adjustment for a market dominant postal product shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended price changes include classification changes or operations changes likely to have material impact on mailers.

#### **§ 3010.11 Limit on size of rate increases.**

(a) Rate increases for each class of market dominant products in any 12-month period are limited.

(b) Rates of general applicability are subject to an inflation-based limitation computed using CPI-U values as detailed in § 3010.12.

(c) An exception to the inflation-based limitation allows a limited annual recapture of unused rate authority. The amount of unused rate authority is measured separately for each class of mail.

(d) In any 12-month period the inflation-based limitation combined with the allowable recapture of unused rate

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authority equals the price cap applicable to each class of mail.

### § 3010.12 Source of CPI-U data for purposes of annual limitation.

The monthly CPI-U values needed for the calculation of the annual limitation under this part shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

### § 3010.13 Proceedings for Type 1-A and Type 1-B rate adjustment filings.

(a) The Commission will establish a docket for each rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

- (1) The general nature of the proceeding;
- (2) A reference to legal authority to which the proceeding is to be conducted;
- (3) A concise description of the planned for changes in rates, fees, and the Mail Classification Schedule;
- (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
- (5) A period of 20 days from the date of the filing for public comment; and
- (6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter 1:

- (1) Whether the planned rate adjustments measured using the formula established in § 3010.23(b) are at or below the annual limitation established in § 3010.11; and
  - (2) Whether the planned rate adjustments measured using the formula established in § 3010.23(b) are at or below the limitations established in § 3010.28.
- (c) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation set forth in rule 3010.11; the limi-

tations set forth in rule 3010.28; and 39 U.S.C. 3626, 3627, and 3629, and issue an order announcing its findings.

(d) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(e) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment and describe the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(f) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 10 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment should address the subjects identified in rule 3010.13(b).

(g) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(h) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(i) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(j) For purposes of subsequent Commission proceedings, findings that a planned Type 1 rate adjustment is in compliance with the annual limitation set forth in § 3010.11; the limitations set forth in § 3010.28; and 39 U.S.C. 3626, 3627, and 3629 are decided on the merits. A Commission finding that a planned Type 1 rate adjustment does not contravene other policies of 39 U.S.C.

chapter 36, subchapter 1 is provisional and subject to subsequent review.

**§ 3010.14 Contents of notice of rate adjustment.**

(a) *General.* The Postal Service notice of rate adjustment must include the following information:

- (1) A schedule of the proposed rates;
- (2) The planned effective date(s) of the proposed rates;
- (3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and
- (4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) *Supporting technical information and justifications.* The notice of rate adjustment shall be accompanied by:

- (1) The amount of the applicable change in CPI-U calculated as required by § 3010.21 or § 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown, and all input values including all relevant CPI-U values are listed with citations to the original sources;
- (2) A schedule showing unused rate authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown;
- (3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources;
- (4) The amount of new unused rate authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26. All calculations are to be shown with citations to the original sources. If new unused rate authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment;

(5) A schedule of the workshare discounts included in the proposed rates, and a companion schedule listing the avoided costs that underlie each such discount. The avoided cost figures must be developed from the most recent PRC Annual Compliance Report. This information must be supported by workpapers in which all calculations are shown, and all input values are listed with citations to the original sources;

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs;

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c);

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629;

(9) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments; and

(10) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(c) *New workshare discounts.* Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

- (1) A statement explaining its reasons for establishing the discount;
- (2) All data, economic analyses, and other information relied on to justify the discount; and
- (3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) *Information required only when Type 1-B rate adjustments are proposed.* The notice of rate adjustment shall identify for each affected class how much existing unused rate authority is used in the proposed rates calculated as required by § 3010.27. All calculations are to be shown, including citations to the original sources.

### Subpart C—Rules for Applying the Price Cap

#### § 3010.20 Test for compliance with the annual limitation.

The appropriate annual limitation shall be applied to a measure of the rates paid by mail sent in each class for which rate adjustments are to be made to determine whether planned rates are consistent with the annual limitation.

#### § 3010.21 Calculation of annual limitation.

(a) The calculation of an annual limitation involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the annual limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to one decimal place.

(b) The formula for calculating an annual limitation is as follows: Annual Limitation = (Recent Average/Base Average) - 1.

#### § 3010.22 Calculation of less than annual limitation.

(a) If a notice of rate adjustment is filed less than 1 year after the last Type 1-A or Type 1-B notice of rate adjustment applicable to an affected class of mail, then the annual limitation will recognize the rate increases that have occurred during the preceding 12 months. When the effects of

those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(b) The applicable partial year limitation is calculated in two steps. First, a simple average CPI-U index is calculated by summing the 12 most recently available monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to one decimal place.

(c) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 1 year after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) - 1.

#### § 3010.23 Calculation of percentage change in rates.

(a) The term *rate cell* as applied in the test for compliance with the annual limitation shall apply to each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. Thus, seasonal or temporary rates, for example, shall be identified and treated as rate cells separate and distinct from the corresponding non-seasonal or permanent rates.

(b) For each class of mail, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class

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described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left( \frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, ..., N)

R<sub>i,n</sub> = planned rate of rate cell i

R<sub>i,c</sub> = current rate of rate cell i

V<sub>i</sub> = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

#### § 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage change in rates as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (*e.g.*, because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

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#### § 3010.25 Limitation on unused rate adjustment authority rate adjustments.

Unused rate adjustment authority rate adjustments may only be applied together with inflation-based limitation rate adjustments or when inflation-based limitation rate adjustments are not possible. Unused rate adjustment authority rate adjustments may not be used in lieu of an inflation-based limitation rate adjustment.

#### § 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1 rate adjustments.

(b) When notices of Type 1 rate adjustments are filed 12 months apart or less, either the annual or partial year limitation (developed pursuant to § 3010.21(a) or § 3010.22(b) respectively) is used to measure the accrued unused rate authority. In either circumstance, the new unused rate authority for each class is equal to the difference between the maximum allowable percentage change in rates under the applicable rate limitation and the actual percentage change in rates for that class.

(c) When a notice of rate adjustment is filed more than 12 months after the previous notice of rate adjustment, unused rate authority is computed in three steps:

(1) The unused rate authority for the 12 months represented by the annual limitation is computed as described in paragraph (b) of this section;

(2) The additional unused rate authority accrued is measured by dividing the Base Average applicable to the instant notice of rate adjustment (as developed pursuant to § 3010.21(a)) by the Recent Average utilized in the previous notice of rate adjustment (as developed pursuant to § 3010.21(a)) and subtracting 1 from the quotient. The result is expressed as a percentage; and

(3) The results from step 1 and step 2 are added together.

(d) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its computation.

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### § 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the price cap shall be subtracted from the existing unused rate authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

### § 3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Unused rate adjustment authority exercised in notices of rate adjustments for any class in any 12-month period may not exceed the applicable limitations described in §§ 3010.21 or 3010.22 plus the lesser of:

- (a) 2 percent; or
- (b) The sum of any unused rate adjustment authority for that class.

### § 3010.29 Transition rule.

If the Postal Service initial exercise of its authority to file a Type 1-A notice of rate adjustment is preceded by a transitional rate case filing under 39 U.S.C. 3622(f):

(a) The annual limitation as calculated in § 3010.21 is applicable if the notice of rate adjustment is 12 months or more after the date of the Decision of the Governors approving rate changes associated with the transitional filing; and

(b) The annual limitation as calculated in § 3010.22 is applicable if the notice of rate adjustment is 12 months or more after the date of the Decision of the Governors approving rate changes associated with the transitional filing. In such circumstances, the date of the Decision of the Governors approving rate changes associated with the transitional filing is the most recent previous notice of rate adjustment.

## Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

### § 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

### § 3010.41 Procedures.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

### § 3010.42 Contents of notice of agreement in support of a negotiated service agreement.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum:

(1) A copy of the negotiated service agreement;

(2) The planned effective date(s) of the proposed rates;



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(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

(c) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; and

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(d) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(e) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

(f) Such other information as the Postal Service believes will assist the Commission to issue a timely deter-

mination of whether the requested changes are consistent with applicable statutory policies.

#### § 3010.43 Data collection plan.

The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10). The data report is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(a) The change in net financial position as a result of the agreement. This calculation shall include for each year of the agreement:

(1) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(2) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(3) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(b) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(c) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

#### § 3010.44 Proceedings for Type 2 rate adjustments

(a) The Commission will establish a docket for each Type 2 rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and

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post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority to which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

### Subpart E—Rules for Rate Adjustments in Exigent Circumstances (Type 3 Rate Adjustments)

#### § 3010.60 Applicability.

The Postal Service may request to increase rates for market dominant products in excess of the annual limitation on the percentage changes in rates described in § 3010.11(d) due to extraordinary or exceptional circumstances. Such requests will be known as exigent requests.

#### § 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstance(s)

giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate increases requested, relate to those circumstances;

(4) A full discussion of why the requested increases are necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested increases are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent increases in whole or in part;

(7) An analysis of the circumstances giving rise to the request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in § 3010.61(a).

#### § 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate increases requested.

#### § 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate authority for each class of mail as of the date of the request.

(b) Pursuant to an exigent request, increases may use accumulated unused

## § 3010.64

rate adjustment authority in amounts greater than the limitation described in § 3010.28.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate increases in excess of the price cap for any class of mail.

### **§ 3010.64 Expedient treatment of exigent requests.**

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

### **§ 3010.65 Special procedures applicable to exigent requests.**

(a) The Commission will establish a docket for each request for exigent rate adjustments, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

- (1) The general nature of the proceeding;
- (2) A reference to legal authority to which the proceeding is to be conducted;
- (3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;
- (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
- (5) A specified period for public comment; and
- (6) Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in § 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any ex-

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planatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3001.9, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

- (1) The sufficiency of the justification for an exigent rate increase;
  - (2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and
  - (3) Whether the specific rate adjustments requested are reasonable and equitable.
- (g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

### **§ 3010.66 Deadline for Commission decision.**

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of a Postal Service request for an exigent rate increase.

## **PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS**

Sec.

3015.1 Scope.

3015.2 Changes in rates of general applicability.

3015.3 Decrease in rates of general applicability.

3015.4 Change in class of general applicability.

3015.5 Rate or class not of general applicability.

3015.6 Sufficiency of information.

3015.7 Standards for compliance.

AUTHORITY: 39 U.S.C. 503; 3633.